Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION

The Virgin Islands Telephone Corporation ("Vitelco") files these comments in support of the petitions for reconsideration of the *Ninth Report and Order*[1] filed by both the National Exchange Carrier Association ("NECA") and Roseville Telephone Company.[2] As more fully explained below, Vitelco has grave concerns about the inclusion of an interstate support mechanism such as long-term support ("LTS") in the intrastate hold-harmless provision announced in the *Ninth Report and Order*, and the apparent decision by the FCC to phase out LTS at the end of the hold-harmless period.[3]

---

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, 64 Fed. Reg. 67416 (1999) ("*Ninth Report and Order*").

[2] *See* NECA Petition for Reconsideration, CC Docket No. 96-45 (Jan. 3, 2000); *see also* Roseville Telephone Company Petition for Reconsideration, CC Docket No. 96-45 (Dec. 30, 1999).

[3] Vitelco, as a rural, insular carrier, participates in these non-rural carrier proceedings to stress to the Commission that it is important for the FCC not to prejudge the rural and insular proceedings with its findings here. The Commission must take the indivdual circumstances faced by rural and insular carriers into account and not simply apply

This decision contravenes both the mandates of § 254 and prior announced decisions of the Commission, and does so without any discussion at all, let alone a finding that LTS is no longer in the public interest. In addition, use of the forward-looking economic cost ("FLEC") model, without the provision of a replacement for LTS funding, does not provide adequate, predictable universal service support. The Commission should therefore reinstate LTS as part of the § 254 universal service mechanism.[4]

I. SECTION 254 REQUIRES THAT THE COMMISSION REPLACE LTS WITH A SPECIFIC, SUFFICIENT, AND PREDICTABLE UNIVERSAL SERVICE MECHANISM.

Section 254 of the Act mandates that the Commission adopt policies for the "preservation and advancement of universal service."[5] The statute states that "[c]onsumers in all regions of the Nation, including...those in rural, insular and high-cost areas" should have access to telecommunications services at rates "that are reasonably comparable to rates charged for similar services in urban areas."[6] Congress clearly did not intend for the Commission to eliminate a current, vital universal service support mechanism such as LTS without providing a replacement that meets the requirements of § 254; doing so would not even "preserv[e]" universal service, and would certainly fail to "advanc[e]" it.

---

policies adopted for non-rural carriers.

[4] The recent *Alenco* decision notes that the Commission is obligated to balance the goal of universal service with the need to open markets to competition. *See Alenco Communications v. FCC*, 2000 WL 60255 (5^{th} Cir. Jan. 25, 2000). However, here the FCC has given no indication that providing a replacement for LTS would harm competition in any way.

[5] 47 U.S.C. § 254.

A. Section 254(b) Requires that the Universal Service Mechanism be Sufficient and Predictable.

While the statute gives the Commission some discretion in creating new universal support mechanisms, that discretion is by no means total. Congress mandated that any system that the FCC adopts must provide "specific, predictable and sufficient" universal service support to areas that require it.[7] A universal service support system that does not adequately fund rural, insular and high-cost areas, and thus does not enable the provision of telecommunications services to these areas at rates comparable to those in urban areas, simply does not comply with Congress' explicit requirements for universal service.

The LTS mechanism currently comprises an important part of the total support given to many carriers in rural, insular and high-cost regions. In 1999, Vitelco received $7,133,280 in LTS, which is an amount roughly equal to the difference between its total loop costs and what it can bill customers in the Subscriber Line Charge ("SLC") and Common Line Charge ("CCL"). It is these LTS payments that allow Vitelco and other high cost LECs to be able to charge CCL rates equivalent to those charged by carriers who have withdrawn from the Common Line Pool.

The FCC itself recognized the importance of LTS to the overall universal service mechanism when it said:

> We agree with the Joint Board that *LTS payments serve the public interest* by reducing the amount of loop cost that high cost LECs must recover from IXCs through CCL charges and thereby facilitating interexchange service in high cost areas *consistent with the express goals of section 254*. Thus, although we remove the LTS system from the access charge regime, *we adopt the Joint Board's*

---

[6] 47 U.S.C. § 254(b)(3).

[7] 47 U.S.C. § 254(b)(5).

recommendation that we enable rural LECs to continue to receive payments comparable to LTS from the new universal service mechanism.[8]

While the reasons for the FCC abandoning this commitment to replace LTS are not clear, it is evident that without a replacement for LTS, the funding for universal service support is incomplete, and the universal service support mechanism fails to meet the requirements of § 254(b).

B. Section 254(e) Requires that the Implicit Subsidies that are Eliminated be Replaced by Explicit Mechanisms.

Section 254 of the Act does not just require that the Commission eliminate implicit support mechanisms. Instead, § 254(e) specifically directs the FCC to make all universal service support regimes that it implements "explicit and sufficient to achieve the purposes of [§ 254]."[9] As stated previously, the Commission has now concluded that LTS is an implicit mechanism which must be removed from the universal service support structure, but the statute does not allow the FCC to stop there. Section 254(e) requires the Commission to replace the implicit structure it is eliminating with an explicit and sufficient funding mechanism.

In the *Ninth Report and Order*, the Commission announced that LTS payments would be included in the interim hold-harmless provision of the new high-cost support mechanism for non-rural carriers.[10] The FCC failed to explain why LTS, which is an

---

[8] Federal-State Joint Board on Universal Service, Docket No. 96-45, *Report and Order* at ¶ 757, (rel. May 8, 1997) (emphasis supplied).

[9] 47 U.S.C. § 254(e).

[10] *See Ninth Report and Order* at ¶ 78.

interstate mechanism, was included in the intrastate hold-harmless provision. Furthermore, because the forward looking economic cost (FLEC) model described in the *Ninth Report and Order* is an intrastate funding mechanism, there is no indication that payments comparable to interstate LTS will be part of the FLEC mechanism once the transitional hold-harmless support is eliminated.

The Commission did not provide any justification for its decision to roll LTS into the intrastate hold-harmless mechanism and not provide a replacement for it when that mechanism expires. The *Ninth Report and Order* failed to explain why a replacement for LTS is no longer in the public interest, and indeed other than the oblique reference to including LTS in the interim hold-harmless amount, did not even state this decision explicitly.[11]

The FCC may only elect not to replace an implicit mechanism such as LTS if it affirmatively decides that the funds paid out through that mechanism are not necessary for a "sufficient" universal service support structure. In this case, the Commission has drawn the exact opposite conclusion, by stating that LTS serves the public interest and should be replaced with comparable payments from explicit mechanisms.[12]

---

[11] The recent *Alenco* decision, where the Fifth Circuit upheld certain changes made by the FCC to the universal service support structure, if applied here, would hold that the Commission has failed to provide adequate support for its decision regarding LTS in the *Ninth Report and Order*: "[A]rbitary and capricious review is narrow and deferential, requiring only that the agency 'articulate[] a rational relationship between the facts found and the choice made.'" *See Alenco Communications Inc. v. FCC,* 2000 WL 60255 at *6 (internal citations omitted). In the *Ninth Report and Order*, the Commission failed to articulate *any* facts that justified its decision to include LTS in the interim hold-harmless provision and eventually eliminate it without creating a replacement.

[12] *See* Note 8, *supra.*

II. USTA IS CORRECT THAT THE FLEC MODEL IS AN INADEQUATE MECHANISM FOR DETERMINING UNIVERSAL SERVICE COSTS AND WILL LEAD TO UNPREDICTABLE AND INSUFFICIENT SUPPORT IN CONTRAVENTION OF SECTION 254'S UNIVERSAL SERVICE MANDATE.

As demonstrated by USTA,[13] the FLEC model adopted in the *Ninth Report and Order* has persistent deficiencies for determining universal service support. Use of this hypothetical model will generally produce support amounts that have no direct relationship to actual costs, and as a result will lead to unpredictable results for recipients of universal service support. In rural and insular areas especially, the FLEC model is unable to provide realistic assessments of the cost of providing service, and in those areas the model will likely result in the decrease or elimination of needed support. This result directly contradicts the statutory mandate of § 254.

A. Actual Costs are a More Reliable Indicator of a Company's Costs than a Hypothetical Model.

Actual costs continue to provide a better, more complete, and more accurate picture of a LEC's cost of providing service than any hypothetical model can. Despite advances in computers and other technologies that have led to ever more sophisticated models, such as the FLEC model adopted in the *Ninth Report and Order*, a model remains, at base, a grossly simplified representation of the real world. No matter how many factors are included, or how complex and cumbersome the model becomes, there will be circumstances where the model is simply unable to accurately render the

---

[13] *See* Federal-State Joint Board on Universal Service, Petition for Reconsideration of the United States Telecom. Association, CC Docket No. 96-45 (Dec. 29, 1999).

complexities and specific details that influence the costs that companies experience in providing service to customers. The most troubling aspect of the use of a model is the inability of LECs to anticipate the specific impact of the inevitable inaccuracies on their individual situations. While a LEC may expect that some amount of cost factors will be distorted through the use of the FLEC model, it will have no way of predicting where these inaccuracies will occur, or how large the distortions will be.

In contrast, actual cost-based recovery by definition provides an accurate reflection of reality. A universal service support structure based on actual costs thus produces results which are far more predictable than the results of a hypothetical model. This allows companies engaged in providing universal service to provide service without the uncertainty caused by having their costs distorted during the provision of universal service support.

B. Smaller and Rural Companies in Particular Will Suffer as a Result of the FLEC Model Because the Results are Unpredictable.

As Vitelco has shown in the companion proceeding on rural and insular areas, smaller and rural companies will bear a disproportionate share of the burden of the FLEC model's unpredictability.[14] The adverse impacts will result from both the small overall size of these companies and the homogeneity of the regions that they serve.

First, smaller and rural companies tend to rely on the provision of universal service support to a significant extent. To a company like Vitelco, which exclusively

---

[14] *See* Federal-State Joint Board on Universal Service, Comments of the Virgin Islands Telephone Company, and attached Report of Kenneth Gordon, Ph.D., CC Docket No. 96-45 (Dec. 20, 1999).

serves a rural, high-cost, insular area, universal service support is necessary for every phase of operations. Because of the importance of universal service support to small and rural carriers, instability in the amount of this support will have a dramatic impact on their continued operation.

Second, the service areas of small and rural carriers often are quite limited, and have uniform characteristics (such as mountainous terrain, poverty, geographic isolation, harsh weather, or a combination thereof) that lead to the need for high-cost support. As a result, any inaccuracy in the FLEC model will likely affect the carrier's entire operation. For example, since the model does not have a provision for increases in cost due to the long-distance transport of equipment, a carrier which exclusively serves an insular region and therefore needs to import all of its equipment will bear the effects of this error in every phase of its operations. The FLEC model will almost certainly underestimate other costs in providing service in a rural, insular environment such as the Virgin Islands, and will have a dramatic adverse impact on the entirety of the operations of insular carriers like Vitelco.

III. CONCLUSION

The FCC must follow through on its commitment to replace LTS payments with an equivalent structure in order to ensure that the universal service support mechanism meets the requirements of § 254. Because the intrastate FLEC model was never designed to replace interstate support structures such as LTS, and because of the possibilities for error inherent in the FLEC model, this model standing alone does not provide adequate, predictable universal service support.

Respectfully submitted,

VIRGIN ISLANDS TELEPHONE CORPORATION

By: ______________________

Gregory J. Vogt
Joshua S. Turner
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006-2304
(202) 719-7000

Samuel E. Ebbesen
President & Chief Executive Officer
Virgin Islands Telephone Corporation
P.O. Box 6100
St. Thomas, USVI 00801-6100
(340) 775-8617

February 7, 1999

Certificate of Service

The undersigned hereby certifies that the preceding document was delivered by hand to the persons listed below.

February 7, 2000

Diane Dixon-Blackman

Diane Dixon-Blackman

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals, Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Sheryl Todd
Accounting Policy Division
Common Carrier Bureau, FCC
The Portals, Room 5-A523
445 Twelfth Street S.W.
Washington, D.C. 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037